IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.410 of 2002.

Date of decision: 8.10.2007.

State of H.P. and another ….Petitioners.

-Versus-

Rafique Mohammad ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.R.M.Bisht, Dy.A.G.

For Respondent: Sunil Mohan Goel, Advocate.

Deepak Gupta, J.(Oral)

This Civil Revision Petition by the State is directed against the order of the learned District Judge, Kullu passed in Civil Misc.Appeal No.8 of 2002 allowing the appeal filed by the plaintiff-respondent and setting aside the order of the learned Senior Sub Judge, Kullu directing return of the plaint on the ground that the Civil Court has no jurisdiction to try the suit.

Briefly stated the facts of the case are that the plaintiff Rafique Mohammad purchased Bus No.HP-34-0466 from M/s.Rajesh Kumar Rakesh Kumar of Kullu. This bus was previously registered in the name of M/s.Rajesh Kumar Rakesh Kumar in the year 1995 and transferred in the name of the plaintiff on 24.4.1999. Thereafter, the defendants-petitioners issued notice to the plaintiff for recovery of Rs.11,83,976/-. According to the plaintiff the amount being sought

to be recovered did not relate only to bus No.HP-34-0466 but also to Bus No.HP-34-4066. He prayed that the amount relating to Bus No.HP-34-4066 was not payable by him.

The State took a plea that the Civil Court has no jurisdiction in view of Section 20 of the H.P. Passengers and Goods Taxation Act, 1955, which reads as follows:

> "No Civil Court shall have jurisdiction in any matter which the State Government or any prescribed authority is empowered by this Act or the rules made thereunder to dispose of or take cognizance of and regarding the manner in which the State Government or any prescribed authority exercise any powers vested in it or him by or under this Act or the rules made thereunder."

The learned trial Court upheld the contention of the State and ordered that the plaint be returned to the plaintiff. The plaintiff filed appeal before the learned District Judge, Kullu which has accepted the appeal mainly on the ground that the State is only entitled to recover the tax in relation to Bus No.HP-34-0466 from the plaintiff and could not have ordered recovery of the tax in relation to Bus No.HP-34-4066. According to the learned District Judge the suit will be maintainable in respect of recoveries in relation to Bus No.HP-34-4066.

Keeping in view the bar to the jurisdiction of the Civil Court under Section 20 of the H.P. Passengers and Goods Taxation Act, 1955, in my view the Civil Court has no jurisdiction, even if a wrong demand is raised by the Department. In case of a wrong demand also it is open to the assessee to reply to the notice

and point out to the Department that he is not liable to pay tax. He cannot approach the Civil Court for grant of this relief. An assessee has a right to reply to the notice. He has a right to be heard and in case the matter is still decided against him remedy of appeal etc. is provided in the Act. In case the demand is wholly without jurisdiction an assessee may in give circumstances directly approach this Court under Article 226 of the Constitution of India. However, the Civil Court would have no jurisdiction to decide the question whether the demand is legal or not.

In view of the above discussion, the order of the District Judge is set-aside and the order passed by Senior Sub Judge, Kullu is affirmed. The plaintiff shall be at liberty either to reply to the notice or if so advised, he may approach this Court under Article 226 of the Constitution of India. The Revision Petition is disposed of in the aforesaid terms. No costs.

CMP No.531 of 2002:

In view of the disposal of the main petition, this application is also disposed of.

October 8, 2007. **(Deepak Gupta),**
PV **Judge**